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NOTE VERBALE DATED 10 APRIL 1996 FROM THE PERMANENT MISSION OF MEXICO ADDRESSED TO THE SECRETARIAT OF THE CONFERENCE ON DISARMAMENT FORWARDING A COPY OF MEXICO'S DECLARATION AT THE INTERNATIONAL COURT OF JUSTICE ON 3 NOVEMBER 1995

The Permanent Mission of Mexico to the international organizations presents its compliments to the secretariat of the Conference on Disarmament and has the honour to send it Mexico's declaration at the International Court of Justice on 3 November 1995 concerning the issue of the legality of the threat or use of nuclear weapons, and requests that it should be distributed as an official document of the Conference on Disarmament.

GE.96-60997 (E)

Mexico's declaration before the International Court of Justice regarding the advisory opinion on the legality of the threat or use of nuclear weapons

(The Hague, 3 November 1995)

Mr. President and members of the International Court of Justice:

Before starting my intervention, I wish to express my profound sadness for the untimely passing away of Judge Andrés Aguilar, a distinguished Venezuelan, a remarkable international lawyer and diplomat with whom I had the honour to work together in the efforts of developing the international legal order.

Allow me now, in the name of the Mexican Government, to assure this Court of the fundamental importance we give to its work as part of the common effort to ensure the full force of the rule of law in international relations.

The significance that Mexico has ascribed to the International Court of Justice ever since the foundation of the United Nations Organization exactly 50 years ago was expressed in the comments made on the Dumbarton Oaks proposal. In the remarks paper, Mexico - which was not invited to Dumbarton Oaks - adopted the position by the distinguished jurists of the informal Allies Committee on the future of the Permanent Court of International Justice. On the basis of previous experience provided by the League of Nations, Mexico felt that in the case of the International Court of Justice it would not be wise to repeat the organic link that connected the Permanent Court of International Justice to the League of Nations. This organic relationship, it was felt, could prejudice the independence of the Court's judges. Therefore, Mexico proposed an international court of justice with the capacity to preserve the highest possible degree of independence in exercising its functions. We felt in 1944 that independence of action would be reflected in this supreme legal authority in growing freedom in the face of any repercussions, direct or indirect, that might affect a predominantly political body like the United Nations Organization would be, which at the time was about to come into existence.

For several reasons, the San Francisco Conference voted for the opposite proposition and made the Court to which you belong a main organ of the United Nations. I would like to emphasize what Shabtai Rosenne says about this in his book entitled "The Law and Practice of the International Court". 1/ "The San Francisco decision makes the Court an integral part of the United Nations". As Judge Acevedo said when dealing with the peace treaties case in the Court to establish this tribunal's obligation to issue the advisory opinions requested by the General Assembly, "The Court, which has been promoted to the status of main organ and an integral part of the United Nations mechanism, must do its utmost to cooperate with other organs so as to fulfil the objectives and principles established in the Charter". Despite our original stance, Mexico understands the significance of the change, and of course accepts the Court as an organ of the United Nations.

Also, Mr. President and members of the International Court of Justice, I would like you to remember that during the fiftieth General Assembly of the

United Nations the Government of Mexico, through the Minister of Foreign Affairs, voiced our decision to examine whether we should retain our reservation against the compulsory jurisdiction of the Court, and this is already being done by the authorities of my country. In examining our reservation we are of course taking into account the principle of reciprocity confirmed by the jurisprudence of this high court.

Relevance of international law

Mr. President,

The search for peace with justice is, in our opinion, the greatest challenge of our times. The role that the rule of law plays or can play in this task is one of the most interesting issues confronted by society.

Firstly, to put peace on a solid foundation, the force of law is necessary, although law in itself does not guarantee peace: to disregard its principles can make any action to achieve this aim arbitrary and subjective. In the words of the libertador Simon Bolívar, international law must be "That body of laws that in peace and in war is the shield of our destiny".

Mexico has emphasized the importance of ensuring the rule of law in international activities since it submitted comments on the Dumbarton Oaks Plan. In one of its first statements, Mexico defined as one of its objectives in joining this international organization "The need for the coexistence of nations to develop harmoniously under the rule of law".

In his book "The world beyond the Charter" 2/ Sir Wilfred Jenks, a British jurist with a long career in the International Labour Organization, describes what he called the basic paradoxes that the world faces. Among these he notes the following in relation to international law: "Never before have so many areas of human activity been subject to regulations. We have achieved fundamental principles of behaviour that are already accepted by the international community, and we have codified in treaties and by the resolutions of international organizations - which acquire more force every day as source of obligations - rules applicable to those activities that have deserved priority attention from the community. However, the truth is that there is still little confidence in law as the way to solve our most basic problems. International law is not a popular subject in public opinion mechanisms, and when it is mentioned, it is almost always to criticize its lack of effectiveness. There is a growing scepticism about the pertinence of using legal measures to control the dynamic changes of today's society. The most tragic implication of this paradox is the ever present danger that law, by not responding properly to the challenge of our society, due to lack of imagination to understand the problems to be solved, among other reasons, will cease to have any influence on human activity".

Allow me a few moments of your time to share some thoughts on this situation. They will no doubt have clear relevance to the subject at hand and for the function that the Court must perform on the basis of the Charter and its statute.

Charles de Visscher pointed out in his book "Theory and Reality in Public International Law" 3/ that the historical development of the organized international community has suffered two fundamental changes in quality, and these are reflected in the gradual transformation of international legal order.

The first of these was the breakdown of medieval society, which gave way to an uncontrollable drive to create a new order. The first sign of this was the establishment of nations in western Europe. This stage, legally endorsed by the Treaties of Westphalia in 1648, marked the beginning of the modern international legal system.

At the beginning of this period, international law was the exclusive property of a small circle of Christian nations, a European club where the major Powers, which exerted collective hegemony over Europe, claimed to have the authority as a group to intervene in questions they considered to be of general interest, as Professor Mossler reminded us in his course at the Academy of The Hague in 1974 on "International Society as a Legal Unit". In time, classical international law came to embrace Africa, Asia and Latin America, not as active participants, creators of a collective effort, but as objects of colonial exploitation. The international legal order was moulded to the structure of colonial power and its premises were defined as a result of relations among the colonial Powers as long as these continued to dominate the so-called "New World".

Perhaps the person who had assessed this issue most eloquently is yourself, Mr. President, in your 1979 book entitled "Toward a New International Economic Order", 4/ published in Spanish in Salamanca. Here you remarked that "the legal order created by ancient international society had the appearance of neutrality or indifference, but the laisser faire laisser passer that it endorsed in fact led to interference with law and encouraged injustice. Therefore, classic international law, though apparently indifferent, was actually permissible. It recognized and confirmed the right of supposedly civilized nations to dominate. It was a colonial and imperial law, which was institutionalized in the Berlin Congress on the Congo in 1885. At that time, this classical international law was presented as a system of rules which were based on geography (it was European), inspired by race and religion (it was Christian), motivated by economy (it was trade-oriented), with certain political objectives (it was imperialist). As Judge Bedjaoui continues, it was necessary to wait until the United Nations Charter for an open community to replace a closed one, and for the term 'civilized nations' to give way to the expression 'peace-loving nations', as stated in the first paragraph of Article 4 of the Charter".

The second historical change in the evolution of the international community discussed by de Visscher was the emergence of a considerable number of independent States as a result of the fall of the colonial system. Between 1945 and 1976 more than 2,000 million people living in the former colonial world were liberated from colonialism thanks to the United Nations, and thus brought into the mainstream of world developments.

There is no doubt that decolonization had a decisive influence in redefining the contents and scope of contemporary international law.

Consequently, the disappearance of colonialism changed the position of many States. From being objects of international law they became full subjects, and active participants in the readjustment of the legal order on the basis of the new features of the international community.

But even so, international life continued to be governed by classic international law that had been based on the practices of a small number of colonial Powers in the eighteenth and nineteenth centuries. In many cases this meant continued inequality and exploitation.

The emergence of a large number of new States as a result of this process poses a question of principle: how far these new States, which did not contribute towards creating international law, already in force when they came into being and whose provisions often do not reflect their interests, are bound by its rulings. This is a vexed question that has been studied by many authors in recent times. Clearly, from a legal and practical point of view the issue is very simple: when a State joins the international community, by this very act it accepts the existing rules and institutions. However, the problem is much more complex and difficult: if numerous regulations of international law are not accepted and actively supported by a large sector of the international community, it will be difficult to ensure the rule of law in contemporary society.

This situation is particularly evident in the case of the long chapter of international law known as "State responsibility", which contains several basic issues relevant to the practices of States.

The tendency described is certainly not to be found in the entire field of international law, but many important international regulations do reflect this inequality. Therefore, it is not surprising that new nations that were not joint authors so to speak, but passive objects of this international law, sometimes give the impression that they rebel against the application of it. The rebellion is direct, as in the case of peoples who aspire to full international personality and have had to resort to violence to throw a long-established colonial yoke. Colonialism was endorsed by the Charter of the United Nations, but this stemmed from political conditions that no longer exist today. On other occasions this rebellion can take indirect forms, which will be described below.

We all remember the scant response to the International Law Commission's proposal for arbitration procedures made in the General Assembly. The draft treaty drawn up by the Commission provided for a series of innovative and severe measures to prevent parties from evading, during the proceedings, their initial obligation to settle the dispute through arbitration. Most countries that do not follow traditional lines in the matter of State responsibility opposed the project. What was the reason why new nations did not support mandatory or almost mandatory arbitration? I ask this question objectively and without <u>parti pris</u>, since Mexico is one of the few countries on the American continent that has ratified with no reservations the Bogota Pact providing for compulsory arbitration. (Additional examples which illustrate our comments are the following: the phenomenon of rebellion is conveniently exemplified by the dispute between Iceland and Great Britain on fisheries. I will not refer to the substance of the problem, which is now solved, but to

the attitude of each country as regards the method preferred at the beginning for finding a solution. Great Britain proposed submitting the whole issue to the verdict of the International Court of Justice. Iceland not only refused to go to the Court to settle the dispute according to "the law in force", but it fought resolutely in the United Nations and other forums for the establishment of a new general rule of international law that would have the effect of settling the dispute in its favour. The essence of the problem was this: if it could be maintained that at that time international law allowed countries to extend their exclusive jurisdiction on fisheries and even on their territorial waters up to a distance of 12 miles, it is probable that at that time most judges of the Court, if the dispute had been submitted, would have decided that prevailing international law did not oblige other countries to recognize a unilaterally defined territorial limit of over three miles.)

This fact is surprising at first sight. The law is almost the defence par excellence for the weak. Precisely because small countries cannot use force to protect themselves, it is to their advantage to see that an international legal order is established with care and applied on a compulsory basis.

As I have tried to illustrate with the previous examples, another form of indirect rebellion by new nations has been their little inclination to accept the binding nature of the International Court of Justice's rulings. In an international community of 185 member countries, most of which are small or gained their independence relatively late, only slightly more than 30 of those which did not have a hand in establishing international law have accepted the jurisdiction of the Court as binding.

This is due to the same reason mentioned above. It is not a matter of distrusting the Court itself, nor is it the result of its little devotion to law. Basically, this problem stems from their not completely unfounded conviction that the body of laws to be applied by the Court generally speaking does not reflect their needs, since it was created during other times and with the practice of States whose interests were very different.

To find a fitting solution to this problem we must be fully aware that this situation exists, and understand it. The solution is not to reproach new nations or small and mid-sized countries for their scant enthusiasm for law and simply lament the fact that the number of States which have accepted the Court's jurisdiction as binding is so small. They must be given access to the processes of creating international law through the activity of international organizations and, of course, the Court. Despite the confidence that a fair number of countries have placed in the Court, it has not been able to affirm itself as a forum par excellence for the peaceful settlement of disputes. The Court has wide discretionary powers and in our opinion should use them to benefit the international community as a whole. Only so far as the Court faces up to the new international environment, will it be able to help keep international peace and security.

The subject that draws us together today is a very good example of the opportunities and challenges that the evolution of international conditions represents for this Court. I respectfully submit the following observations

in connection with the two questions being discussed. I will refer especially to the advisory opinion requested by the United Nations General Assembly.

(a) Mexico reaffirms each and every one of the considerations contained in the document we have submitted on the basis of the request for an advisory opinion by the United Nations General Assembly in its resolution 49/75 K. In particular, I would like to quote the following paragraph: "The threat posed to the survival of mankind by the existence of nuclear weapons grants to the international community as a whole the right to pronounce itself on the illegality of such weapons and to act accordingly above any sovereign right that a State may claim, to acquire any means it deems appropriate to guarantee its defence. Certainly, nuclear-weapon States cannot claim that this question belongs to their internal jurisdiction. The Charter of the United Nations undoubtedly established as its principal purpose the maintenance of international peace and security. The mere possession of nuclear weapons runs contrary to the security of mankind".

(b) The International Court of Justice, as a principal organ of the United Nations, has a clear responsibility to determine the merits of the problem brought before it concerning such an important issue on the international agenda.

We do not accept the comments made by some member countries that the Court should not pronounce itself on this matter. To argue the political nature of the issue, the claimed vagueness of the questions posed, or the argument that the United Nations General Assembly should not have requested an advisory opinion on subject-matters of its exclusive competence or falling within the competence of the Security Council, is not acceptable.

In relation to the first procedural objection it is pertinent to recall what Sir Gerald Fitzmaurice said in his book "The law and procedure of the International Court of Justice" 5/ published in 1986. "If the question submitted to the Court is in itself a legal issue and inter alia, all the questions related to the interpretation of international instruments are ipso facto legal ones, the fact that the subject contains political elements is irrelevant".

In this context, Judge Fitzmaurice cited the following cases brought before the court: the case of admissions in 1948; the 1950 admissions case, and that of peace treaties, also in 1950.

We do not consider the argument that the question is supposedly hypothetical or very abstract in the way it is presented as justification for the Court not pronouncing its verdict on the merits of the case. According to Articles 96 of the Charter and 65 of the Court's Statute, this tribunal can give an advisory opinion on any legal question, whether abstract or not. That criterion was applied in the two "admissions" cases examined in 1948 and 1950 by the Court. To quote again from Judge Fitzmaurice's 1986 book mentioned above, "The court has the right to give advisory opinions on abstract matters and if the subject is of a legal nature, it is irrelevant whether this is done in abstract terms or a specific case is referred to".

We do not know the grounds for considering the terms of the question put to the Court as "abstract", when in fact the nuclear threat has been a very real constant in international conflicts, even after the end of the cold war. In this regard, I would like to refer to the studies prepared by David R. Morgan, national president of the organization "Veterans against nuclear arms" dated 22 October 1995 and entitled "Summaries of the threats of use of nuclear weapons during the 16 known nuclear crises of the cold war (1946-1985)" and the article entitled "Nuclear targeting of the third world" by Milan Rai and Declan McHugh. To postpone giving a legal opinion on the threat or use of nuclear weapons until an actual case occurs is like substituting medicine with an autopsy. Specifically, we would like nations to know whether the policies that they consider as options are legal and are not likely to have consequences that could bring them after the act into an international court.

Mr. President and Members of the Court,

For years we have been facing a process of globalization. One of the consequences of this situation is general agreement that many problems should be solved on a multinational basis. This has produced a widened sphere of application for classic international law, which has grown from the right of nations to coexist, to a law that recognizes certain minimum levels of well-being as common aims. In 1969, Wolfgang Friedmann, as an exercise in theory, considered the expansion of the sphere of international law in the following terms: "The expansion of international law in progressing from an essentially negative code of laws of abstention to positive laws for cooperation - very fragmentary and inadequate though they may be in the present state of international politics - is an extreme development for the principles and structure of the international legal order."

In support of this idea, "cooperation as a principle of law", the former British judge in the International Court of Justice, Sir Gerald Fitzmaurice, whom I had the honour to know in my first years in the legal committee of the United Nations General Assembly, in his special report to the Institute of International Law entitled <u>The future of public international law and the international legal system in the circumstances of today</u> says the following: "We believe that, on the whole, it is not too much to think that the idea of the obligation to cooperate is well advanced on the path towards being accepted as a general principle of international law (<u>jus cogens</u>). Once the obligation to act in good faith is accepted, it must be recognized that something more is needed than abstention from acting in bad faith: an attitude <u>uberrimae fidei</u> is needed, which probably embraces the idea of recognizing a general common interest when this manifestly exists, and the wish to participate in measures to promote this common interest, or at least to refrain from measures that could harm it."

Here it is also pertinent to remember the verdict of the International Court of Justice in the case of the "Barcelona Traction" aired in this tribunal in 1970. In this judgment, a distinction was made between obligations for "the international community in general" and the "obligations of one nation towards another". On this occasion, the Court stated: "By

their very nature, the first interest all States, given the importance of their rights at stake; all States can be said to have a legal interest in protecting them, they are obligations erga omnes."

As regards the contention that the General Assembly should not have asked for guidelines on a subject of its competence, it must be pointed out that there are clear precedents in this regard. For instance, the Assembly requested clarification of a point of law (the Peace Treaties case, 1950, International Court of Justice) concerning a matter that was within its competence, as clearly established in the first resolution of the first United Nations General Assembly. This unanimously established the Atomic Energy Commission, whose first task was to prepare specific proposals "for the elimination of national arsenals of atomic weapons and all other arms capable of causing mass destruction", and in practice the Commission dedicated itself entirely to the subject of nuclear weapons. 6/

(c) The decision to abolish nuclear weapons is still the main goal of organized mankind. However, the advisory opinion refers only to the legality of use or the threat of force involving nuclear weapons, which according to law is clearly illegal.

In this respect, Mexico reasserts the absolute nature of the principle contained in the United Nations Charter that prohibits the threat or use of force in international relations. Therefore, we stress that it is impossible in these times to conceive the principle prohibiting the threat or use of force simply as a limitation of a nation's activity.

This principle also means that the competent organs of the United Nations are given a virtual monopoly of the authority to judge and decide, as well as the coercive power necessary in the international community, although it is not complete. Ever since San Francisco, and to the extent that the Organization is inefficient, and that its centralization is not complete, the collective security system recognized the need for States to take on certain and limited aspects of the use of force by exercising the right of legitimate self-defence, either individually or collectively.

However, this exceptional power is only granted to a country when it becomes necessary to replace or assist the Organization due to its lack of means of action, that is, in the actual use of force. It would not be possible to enhance this exceptional power when the centralization of authority is legally complete, that is to say in such time in which the Organization is indeed empowered to legally decide, in a final and binding manner, whether force should be used, and determine its extent and conditions.

In this context, for the reasons we give in our written comments and which I will now develop, the threat or use of force with nuclear weapons falls within the prohibition or prohibitions described above, including the prohibition in the exercise of legitimate collective or individual self-defence or pursuant to the resolutions of the Security Council. The same would apply to the resolutions of the General Assembly, following the precedent set by the resolution "Uniting for Peace", in what scholars called "The residual powers of the General Assembly".

Furthermore, we reject the theory that began to take shape in the Organization's earliest years which maintains that legitimate self-defence can be used not only against an armed attack that has already begun but against a State whose level of preparation for war and manifest aggressive intentions justify the suspicion that an attack is imminent.

It does not need much imagination to realize where this theory would lead us in a situation of atomic balance. It is enough to think that at this very moment there are still hundreds and perhaps thousands of projectiles with thermonuclear warheads ready to be fired. Fortunately the rational statesmen who have the control of nuclear arsenals in their hands - let us hope this is the case - handle the ideas of "clear and imminent danger" with less disrespect and levity than certain jurists do.

The second trend adversely affecting the Charter does not directly widen the scope of the right to resort to legitimate self-defence, but it is very closely linked to this very issue to demonstrate the importance that this trend has. It is enough to say that it was put before the United Nations Charter Committee of the International Law Association at its 1962 session in Brussels by the rapporteur for the topic, Professor Schwartzenberger, as follows: "The belligerent whose enemy violates the contractual obligation not to resort to force or warfare has the right, in reprisal, even when the attack was made with ordinary weapons, to use nuclear and thermonuclear weapons". An attempt was made to establish this theory by saying that the limitations imposed by customary international law on the use of biological and chemical weapons are based on their incompatibility with rules forbidding the use of poisons or poisoned weapons, rather than on their nature as weapons of mass destruction.

The interesting point about this theory is that a certain number of distinguished jurists supported it, although it is only fair to say that a probably larger number rejected it. It is also interesting to note that it re-emerges from time to time in academic and even political fora, as it happened a few days ago when a nuclear cooperation programme between two nuclear-weapon States was announced, apparently including among their defence doctrines the launching of an atomic bomb as a warning in case "their vital interests are threatened".

Theoretically, the concept of "vital interests" or "national interests" or "national security", was known to us as "raison d'état", or as Pascal said in his well-known aphorism "The State has its reasons, which reason knows nothing of".

Regrettably, even today there are many examples of actions taken by States invoking national interest above international law and above multilateral and bilateral treaties. In this regard, I refer to the case of the recent agreement between Great Britain and France on nuclear cooperation, to some military actions of the United States, and to the statement by General Vladimir Semyonov, Commander of the Russian forces, who referring to the deployment of Russian troops in Chechnya, justified such an action which presumably violates the Agreement on Conventional Armed Forces in Europe, by declaring that "the interests of Russia and its security are above the provisions of the treaty to which it is a party".

On this particular subject, I will simply say that in the opinion of my country the use of nuclear weapons in reprisal - or on any other pretext - against a non-nuclear attack is contrary to the principle of proportionality.

"If a belligerent barbarously massacres women and children, it is not human for the other to respond with the same barbarity." D. Antokiletz, "Derecho internacional público" 440 (4th ed. 1944) (Trans.). Torture is not a permissible response to torture. Nor is mass rape acceptable retaliation for mass rape. Just as unacceptable is retaliatory deterrence - "You have incinerated my city, I will incinerate yours".

As stated by Judge Jens Evensen, a former member of this Court, in a 13 April 1989 press conference at The Hague, "Reprisals are themselves violations ... (and) the very nature of modern weapons are such that nuclear weapons should never be allowed to be used, never as first use, never as reprisals ... The use of nuclear weapons is the ultimate crime ... We can formulate all kinds of scenarios, but that doesn't change the basic approach that there are certain weapons of warfare that are illegal and criminal and the behaviour of the other party doesn't make them legal".

All the explosives used during the five years that World War II lasted amounted to two megatons and now, as we all know, there are nuclear weapons available each with the explosive power of 50 megatons. Secondly, international law protects neutral States, and the effect of nuclear weapons cannot be controlled to this extent.

In addition, nuclear weapons do not make any distinction between armed forces and the civilian population; nuclear weapons are blind, and because of their probable effects on future generations due to their very nature, may even be considered inevitably genocidal. Let us ask ourselves: how is it possible in these circumstances to deny that the use of nuclear and thermonuclear armaments is contrary to the United Nations Charter and is the gravest example of the use of force?

(d) Mexico is one of the many countries that recognizes legal value as an international law source to some of the resolutions adopted by international organizations - a theory pioneered by the Mexican jurist Jorge Castañeda among others, I should add - and since many of the decisions that we cite to declare the use and threat of force with nuclear weapons illegal, are precisely resolutions of multilateral forums, I would like to explain our grounds for this theory to the Court.

It is true that a resolution of the United Nations General Assembly cannot be compared in legal value to a treaty in force between two or more countries. In a treaty, the parties enter into a formal commitment with the clear intention of being bound by everything that appears in its text and in strict conformity with their respective constitutional regulations. On the other hand, the resolutions of the General Assembly, although drawn up by specialized commissions, are the result of overcrowded debates and are passed by the vote of representatives from each country, normally appointed by their executive power. Nevertheless, there is a wide difference between agreeing

that the contents of a resolution of the Assembly do not have the full binding force of a treaty, and denying it any legal effect. This cannot be ignored at the risk of committing a serious error.

The reasonable attitude is to consider that the resolutions of the United Nations General Assembly, though lacking the binding force of a treaty, often express a general consensus - especially if they have been approved by a strong majority - and therefore they confirm or reinforce precedents in international law. As Oliver Lissitzyn said in his book "International law in a divided world" published in Montevideo in 1965: "Coming from the representative organ of the largest of the organizations ever conceived by mankind, resolutions must have considerable significance in the development of international law, since they recognize or confirm general practices or legal principles, which can come to be general principles of law". The juridical value of some resolutions is so undeniable that innumerable decisions of this high Court cite them as a source of law. In other words, they are used as the best way of determining the principles recognized by nations, in my opinion not only to confirm the existence of a customary rule, but to validate the theory of lex ferenda.

Finally, there is a decisive argument: whatever opinion one may have about the juridical value of the resolutions of a forum like the United Nations General Assembly, no one can claim that the opposite of what has been passed by an overwhelming majority in a forum that represents the feelings of almost all the nations in the world can be held as an international custom or as a generally recognized principle of international law. Consequently, even denying that these resolutions are binding legal regulations or that they confirm rules or legally valid principles, it is clear that the opposite principle, the one overthrown in a vote, cannot be presented as a valid rule either.

In Mexico's opinion, the above confirms the relevance of the Declaration on the Prohibition against the Use of Nuclear and Thermonuclear Weapons No. 1653 (XVI) which states "The use of nuclear and thermonuclear weapons is contrary to the spirit, letter and objectives of the United Nations, and, as such, a direct violation of the United Nations Charter". This Declaration, adopted by the General Assembly is ratified in resolutions such as No. 2938 (XXVII) (Part B) and others. All of them supported by significant majorities, all stressing the use or threat of nuclear weapons as a violation.

Furthermore, the treaties that forbid not only the use and threat of nuclear weapons but also their possession, transfer and production, such as the Tlatelolco Treaty for the Proscription of Nuclear Weapons in Latin America, the Antarctic Treaty, the Treaty on the Prohibition of Nuclear Tests in the Atmosphere, in Outer Space and Under Water, and the Treaty on the South Pacific Denuclearized Zone (Rarotonga Treaty) reflect one of the most effective procedures for attaining the abolition of nuclear weapons throughout the world: that is by gradually reducing the areas of conflict in nuclear terms.

Therefore, the argument that the existence of these treaties proves there is no universally applied regulation is untenable. It would be tantamount to saying that the only source for international law are the treaties, which is

not compatible with article 38 of the Statute of the International Court of Justice, and even less with our theory put forward in this intervention on the value of some resolutions of the United Nations General Assembly; what some theorists call an "instant custom" as a source of obligations and rights.

As Mexico stated in its written comments, even the Treaty for the Non-Proliferation of Nuclear Weapons has as its final objective the abolition of this type of artefacts, as it was expressly mentioned in the last review and extension conference of this international instrument. On that occasion, Mexico specifically rejected the argument that by the indefinite extension we were accepting a dichotomy between countries that have nuclear weapons and those that cannot obtain them. As stated in the press release of the Ministry of Foreign Affairs (5 September 1995), Mexico attaches great importance to the fulfilment of the commitments to nuclear disarmament assumed at that Conference. Should these not be fulfilled, we will need to revise our continuation as party to the Treaty for the Non-Proliferation of Nuclear Weapons on the basis of article X.

In short we are not prepared under any circumstances to accept a monopoly in the possession of nuclear weapons or to allow the modernization of these devices through tests whose legality we also question.

(e) International law applicable in cases of armed conflict, also known as humanitarian law, is composed of the set of legal provisions that ensure respect for human life, as its name indicates. This is divided into two branches, one of which is the law of The Hague and the other, the law of Geneva. The first establishes the rights and duties of nations during wartime, and among its most important precepts is the one limiting the freedom to choose the means of combat. If we accept the principle by which the use of any weapon is legitimate only as far as it is employed to put the combatant hors de combat, whether or not in self-defence, we could not even think that international law permits the possibility of defeating mankind as a whole.

Its stipulations stem mainly from the agreement approved in The Hague in 1899 and amended in 1907, by the peace conferences held here in those years. This is why it is known as the law of The Hague, although this branch also includes other Conventions such as that of St. Petersburg in 1868 prohibiting certain weapons, and the 1925 Geneva Protocol which forbids asphyxiating gases, bacteriological weapons and similar ones.

The aim of the law of Geneva is to protect soldiers who are hors de combat, as well as those who do not take part in hostilities. Its stipulations are contained in the four Geneva Conventions of 1949 and in the additional protocols to these instruments. They are the most significant effort made so far to codify the rules for protecting individuals in cases of armed conflict. The most important feature of this set of laws is that it tries to somehow prevent civilians from becoming direct victims of warfare.

Finally, it is worth emphasizing a general principle that was included in the Preamble of the two Hague Conventions, known as the "Martens clause" after the Russian jurist Fedor Fedorovich Martens. Its purpose is to confirm the enforcement of international law even in cases where existing international conventions do not stipulate the rules to be applied in determined situations.

This clause specifies that in such cases "the inhabitants and belligerents remain under the protection of the rule of the principles of law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience". And if there were any doubts concerning the preoccupation of mankind regarding this problem, the Association of Survivors of the Nuclear Attacks against Nagasaki and Hiroshima handed me in New York the copies of 100,000 signatures, out of the 50 million persons who subscribed a declaration expressing their repudiation of nuclear weapons.

It is exactly this principle embodied in the "Martens clause", and another which emerged from the Hague Conferences establishing that "excessively cruel or repulsive weapons, although they have military use, should be prohibited". The devastating effects produced by nuclear weapons of an indiscriminate nature, as was evidenced by the attacks on Hiroshima and Nagasaki, and which reaffirm the illegality of the use and threat to use nuclear weapons in any circumstance and I repeat in any circumstance, as I have tried to prove in this statement.

(f) Finally, it is pertinent to recall that the Human Rights Committee, whose function consists in supervising the implementation of the International Covenant on Civil and Political Rights, has determined that nuclear weapons endanger the right to life as follows: "The designing, testing, manufacture, possession, deployment and use of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of nuclear weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the international covenants on human rights".

In other words, nuclear weapons endanger the right to life and contribute to create a climate of mistrust amongst States which increases the possibility that the threats may become actual attacks.

In this regard, I wish to recall that the Vice-President of this Court, Judge Schwebel, stated with regard to human rights that the obligations of States in this field cannot be considered as pertaining to the domaine réservé of a given State. And "Once a State has undertaken obligations towards another State, or towards the international community in a specified sphere of human rights, it may no longer maintain vis-à-vis the other State or the international community, that matters in that sphere are exclusively or essentially within his domestic jurisdiction and outside the range of international concern". Consequently, the possession and the use of nuclear weapons which violates the right to life cannot be justified by nuclear-weapon States as part of their strategy of defence or as a matter falling within the domestic jurisdiction of that State.

These, Mr. President and members of the International Court of Justice, are the comments that Mexico submits in its first appearance since this tribunal was created. I hope they will contribute substantially to the advisory opinion that the Court will issue in response to the request of the General Assembly, the forum which best represents the opinion of mankind in subject matters such as the present one.

Notes

1/ SHABTAI, Rosenne; 1965 The Law and Practice of the International Court, Leyden, Netherlands; A.W. Sijthoff.

2/ JENKS, Wilfred; 1972 (1909) El Mundo más allá de la Carta: Cuatro Etapas de la Organización Mundial; Madrid, Tecnos, Colec. Ciencias Sociales.

3/ DE VISSCHER, Charles; 1957 Theory and Reality in Public International Law; Princeton; Princeton University.

4/ BEDJAOUI, Mohammed; 1979 Hacia un Nuevo Orden Económico Internacional, Salamanca, España; Edit. Sigueme.

5/ FITZMAURICE Gerald, The Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points, apud, SHABTAI, Rosenne, op. cit.

6/ There is no doubt that the nuclear attacks on Hiroshima and Nagasaki produced a negative effect on the future of the United Nations Organization just a few weeks after its founding Charter has been signed on 26 June 1945, and only months before the first General Assembly met in London on 24 January 1946. They created a situation that changed the basic concepts under which the United Nations had been created, and which it had to address as a matter of priority.

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